

**INFORMATION SHEET**  
**DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS**  
**RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK**  
**COUNTY V. U.S. ARMY CORPS OF ENGINEERS**

**DISTRICT OFFICE:** Walla Walla District

**FILE NUMBER:** NWW No. 032100220

**REGULATORY PROJECT MANAGER:** Gregory J. Martinez **Date:** January 25, 2005

**PROJECT REVIEW/DETERMINATION COMPLETED:** **In the office (Y/N)** N **Date:** \_\_\_\_\_  
**At the project site (Y/N)** Y **Date:** January 5, 2005

**PROJECT LOCATION INFORMATION:**

**State:** Idaho

**County:** Gem

**Center coordinates of site by latitude & longitudinal coordinates:** lat:43-51-46.0800 lon:116-32-59.2080

**Approximate size of site/property (including uplands & in acres):** 120 acres

**Name of waterway or watershed:** near the Payette River

**SITE CONDITIONS:**

Type of aquatic resource <sup>1</sup>	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake									
River									
Stream									
Dry Wash									
Mudflat									
Sandflat									
Wetlands		2.1							
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
Natural pond									
Other water (identify type) irrigation collection ditch									

<sup>1</sup>Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors <sup>1</sup> :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?	x				
Is or would be used as habitat by other migratory birds that cross state lines?	x				
Is or would be used as habitat for endangered species?		x			
Is used to irrigate crops sold in interstate commerce?		x			

<sup>1</sup>Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

**TYPE OF DETERMINATION:** Preliminary \_\_\_\_\_ Or Approved X

**ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 – site conditions; paragraphs 2-3 – rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 – site information on waters of the U.S. occurring onsite):**

The Enterprise Ditch (wetland #2) is a category 5 water that flows to the Farmers Cooperative Wasteway that flows to the Payette River a category 5 water, that flows to the Snake River, a category 2, navigable water.

Wetland # 3,4,6,8 and 11A & B are unnamed irrigation ditches or irrigation drains that flow to the Enterprise Ditch, a category 5 water of the United States. In *Headwaters Inc. v. Talent Irrigation District*, 243 F.3d 526 (9<sup>th</sup> Cir. 2001) the court held that canals, ditches, and drains that are capable of carrying pollutants to navigable waters are jurisdictional as tributaries under the Clean Water Act. Northwest Division of the US army Corps of Engineers views that court case as binding in the geographic jurisdiction of the US Court of Appeals for the Ninth Circuit that includes Idaho. Therefore, wetlands #3,4,6,8 and 11 are tributaries and waters of the United States as category 5 waters.

Wetland 10A and 10B are sedge meadow wetlands that border Wetland #11A (unnamed irrigation ditch) a category 5 water. Wetland 10A and 10B, were delineated using the Corps of Engineers 1987 Wetland Delineation Manual. Positive indicators of wetland plants, hydrology and hydric soils were confirmed. Wetland 10A and 10B are waters of the United States subject to jurisdiction under the Clean Water Act.

Wetland # 1,5,7 and 9 are depressional sedge wetlands that do not have a surface connection with any other waters of the United States. These wetlands terminate and are separated from other waters of the United States by upland pasture land. These wetlands are not boatable and are not open to the general public to use. Migratory waterfowl likely use these wetlands for feeding on grasses and seeds. These wetlands have been grazed in the recent past and its possible some of the cattle that have grazed the area where sold in interstate commerce. However, there is no other evidence of its use in interstate or foreign commerce. Based on Solid Waste Agency of Northern Cook County v. US Army Corps of Engineers, 531 US 159 (2001), isolated, non-navigable intrastate waters are not jurisdictional under the Clean Water Act if the sole interstate commerce nexus is the use of such by migratory birds or other factors in the Migratory Bird Rule. Therefore, wetland #1,5,7 and 9 are not considered waters of the United States.